Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	
Development of Competition and Diversity in Video Programming Distribution and Carriage	)	

Comments of Engle Broadcasting

Engle Broadcasting, licensee and operator of WPSJ-LP, a Class A station in Winslow Twp., New Jersey respectfully submits these comments.

BACKGROUND

We are frequent users of leased access capacity. It is the only way to reach enough people in our coverage area to make local programming viable. Cable penetration in our market area is over 74% (just over 600,000 subscribers). Direct broadcast satellite penetration figures are unavailable but estimated to be about 20%. This leaves about 6% of the market to view us over the air. This is not enough to support the high cost of living and doing business in New Jersey.

Our programming is advertiser supported. Cable is so entrenched in this market that even local advertisers will not buy ads unless the program is on cable.

Under current law, it is impossible for WPSJ-LP to qualify for must carry on cable. The cable operator in this market refuses to carry WPSJ-LP.

Without leased access, we would not be able to get advertisers to support our programming and we would have to cease operation.

LEASE ACCESS RATES

In the past we have leased an entire channel on a small cable system with 5,000 subscribers. At that time we paid $100.00 per month ($.02 per subscriber per month). We also attempted to lease a channel on larger systems. With the aid of an attorney at a cost of $15,000.00, we received quotes of $1.7 million per year for a small cable system and $3.9 million per year for a system with about 100,000 subscribers. None of these rates were feasible.

At present, we purchase time, in half hour increments, from a local full power station and from regional cable systems.

The cable operator charges the maximum allowed under the Commission's rate structure. The local full power station charges a market based rate. The price of a half hour, in primetime, on the local full power station is 65% less than the same time slot on the cable system.

Currently, we purchase about five half hours per week from the full power station and about 1 hour per week on cable leased access (down from a peak of about 15 hours per week).

We would like more of our programming to be available to cable subscribers however
it is not economically feasible. We cannot charge rates for advertising in our programs that are significantly higher than our competitors. Yet unlike our competitors we must pay for cable carriage as well as transmission costs. This disadvantage severely hurts us.

Class A stations are the only stations required to provide local programming. The Commission and Congress have a strong interest in maintaining a diversity of local voices. Leased access was adopted to do that. The Commission can use leased access to ensure a healthy Class A service.

We suggest the Commission adopt a token leased access fee for Class A stations whose owners live within the station's protected contour. Here are two possibilities:

a) $0.003 per subscriber per month paid by the Class A station to the cable operator for a fulltime leased access channel;
b) Credit towards the cable operators regulatory fees for fulltime placement of a locally owned Class A station on a leased access channel.

TECHNICAL ISSUES

In general, the programs we run are of a local public service nature, providing informative content such as medical, therapeutic and legal or local sporting events. An example of one of our programs is Legally Speaking, a half hour, once a week program produced with the local Bar Association. Each week a panel of lawyers discuss topics such as Divorce, Child Support, DUI and Starting a Business. The program is a valuable source of information to the public, especially those not able to afford an attorney. The program was scheduled to run for 26 weeks. Only 8 episodes ran correctly, the other18 had technical problems. Sometimes the program would start 3-5 minutes into the show, cutting off the opening and introductions, sometimes the wrong episode ran and sometimes the program did not run at all.

The cable operator's engineers and staff were always very helpful and nice about the problems, but the end result is our shows did not air.

This problem has occurred over the years with many cable operators. In one case, we were purchasing time on a system 75 miles away. The program was a live call-in featuring doctors from a world-famous cardiology hospital in New Jersey. The doctors would discuss aspects of heart health and viewers would call-in and ask questions. Because the nature of the program was live, we jumped through many hoops to get the signal to the cable operator's headend. At considerable expense, we rented space on the roof of a building to receive our off-air signal, then used telephone company fiber to bring our signal to the headend. Since the cable system was so far away, we had no way to monitor the program to assure it actually ran. In many cases the program did not run but the cable operator claimed it did. Employees of the hospital and patients of the doctor, who eagerly waited to see their program were disappointed when some other program would air. They would call us, we would have to wait to the next day (cable phones were not manned during primetime) to talk to the cable operator. At first they would claim the program aired as scheduled, but when we insisted they check it out, they would admit that the program did not air. This happened about 4-5 times in the course of the 13 week series. The cable operator credited us the cost of the airtime, however our reputation with the hospital was damaged. They have not done programs with us since.

When a lease access program does not air or has technical problems, the only requirement on the cable operator is to issue a credit of the charge for lease access time or run a make-good airing. There is no compensation to the programmer for other expenses incurred such as advertising and promoting the program or for damage to the programmer's reputation. In the marketplace, when a business fails to fulfill a contractual obligation, there is jeopardy for losses surrounding the breach. The Commission exempts cable operators from any obligation other than the cost of airtime. The Commission should change this to allow programmers the opportunity to recoup losses beyond the cost of the leased access time.

Additionally, cable operators do not provide affidavits affirming leased access programs have run. This is counter to standard practice in the advertising and broadcast industry and there is no additional charge to the purchaser. The Commission should require cable operators to assure leased access programming runs as scheduled and to provide affidavits to programmers without an additional charge to the programmer.

INSURANCE

Under current law, cable operators are permitted to require programmers provide proof of insurance naming the cable operator as additional insured.

Typical terms include Broadcasters' Liability/Errors and Omissions of one million dollars; Commercial General Liability Insurance of one to five million dollars; and Workers' Compensation insurance with limits of $300,000.00. For a Class A station such as WPSJ, this is not a problem as we routinely carry this insurance, but for an independent video producer, this can be an onerous burden.

We believe this is a major reason why lease access is under utilized. We suggest the Commission forbid cable operators requiring insurance of lease access programmers.

COMPLAINT PROCESS

In the decade of the 1990's, WPSJ filed several complaints against cable operators alleging failure to provide rates. WPSJ would request rates and times; the cable operators would typically ignore our requests or flat out refuse to give us rates claiming there was "no time available." Once we filed a complaint with the Commission, the operators would wait about 45 days then provide the rates and file a response to the complaint stating the rates had been provided and requesting dismissal. We found the complaint process to be unwieldy. There was a high burden on the programmer. Complaints must be filed within 60 days or be dismissed without consideration. Cable operators had 30 days to respond but faced no penalty for taking 45 or even 60 days to respond.

We suggest the Commission streamline the complaint process, allowing online complaints and reduced burden of proof on programmers.

<u>SUMMARY</u>

To conclude, we urge the Commission to retain the leased access service, adopt a minimal token rate for Class A stations, streamline the complaint process, forbid cable operators from requiring insurance of lease access programmers and strengthen programmers recourse lease access programming does not run.

We respectfully submit these comments.

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